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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 16977/2022

CCL INTERNATIONAL LIMITED ..... Petitioner

Through: Mr. Akhilesh Kumar with Mr. A.K. Agarwal, Mr. Vipin Garg and Mr. Pushker Pandey, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr.Vinish Phoghat, SPC for R-1

Mr. Kunal Sharma, Sr. SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **05.03.2024**

1. The order sheet would reflect that despite time having been granted on earlier occasions, no counter affidavit has been filed by the respondents. Today, yet again, time is sought for complying with our earlier directions. However, bearing in mind the solitary ground on which we have found the petitioner is liable to succeed in its challenge, we find no justification to accede to the request made on behalf of the respondents. This more so since the writ petition itself has been pending on our board since 2022.

2. We note that the challenge which stands raised in the writ petition essentially is to the initiation of proceedings under Section 148 of the Income Tax Act, 1961 ["**Act**"] and has succinctly being noticed in our order of 13 December 2022. The said order is extracted herein below:-

"1. This writ petition is directed against the order dated 25.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 [in short "Act"] and the consequential notice of even date i.e., 25.07.2022, issued under Section 148 of the Act concerning assessment year (AY) 2013-14.

2. Counsel for the petitioner/assessee says that the petitioner had filed a return concerning AY 2013-14, qua which queries were raised and the same were answered; whereupon an assessment order was framed under Section 143(3) of the Act.

3. A perusal of the reasons furnished by respondent no.2/revenue shows that there are two allegations levelled against the petitioner/assessee: First, the predecessor-in-interest of the petitioner/assessee i.e., AAR Infrastructure Limited had sold an immovable property worth at Rs.1,08,76,000/- in financial year (FY) 2012-13 (AY 2013-14). Second, the petitioner/assessee had recorded bogus long term capital gain amounting to Rs.20,07,54,416/-.

4. Counsel for the petitioner/assessee has drawn our attention, inter alia, to the income tax return filed for the aforementioned AY, the query raised and answered by the petitioner/assessee. These documents are appended on pages 66, 141 and 144 of the paper book.

4.1 A perusal of the documents shows that the petitioner/assessee has taken a stand before the AO that since its agricultural land had been acquired by the Yamuna Expressway Authority, it received compensation amounting to Rs.1,08,75,350/-, against which, a capital gain amounting to Rs.65,03,766/- had been recorded.

4.2 The petitioner/assessee, accordingly, had also claimed exemption under the relevant provisions of the Act.

5. Insofar as the other allegation is concerned, the petitioner/assessee claims that it has not earned any long term capital gain.

5.1. It is also the submission of the counsel for the petitioner/assessee that no material had been furnished by respondent no.2/revenue based on which the reassessment proceedings were triggered.

6. In our view, the matter requires examination.

7. Accordingly, issue notice to the respondents.

7.1 Mr Vinish Phoghat accepts notice on behalf of respondent no.1/UOI, while Mr Kunal Sharma, accepts notice on behalf of respondent no.2/revenue.

8. List the matter on 11.08.2023.

9. In the meanwhile, the operation of the order dated 25.07.2022 passed under Section 148A(d) of the Act and the notice of even date issued under Section 148 of the Act, shall remain stayed till further orders of this Court."

3. We note that the principal question which appears to have been addressed before us was with respect to the fair disclosure made by the petitioner in respect to the source of funds as well as in respect of the alleged long term capital gains which had been obtained.

4. These were aspects which were also raised in the objections which were tendered pursuant to the notice referable to Section 148A(b) of the Act. This would be evident from the extracts of that response which are reproduced herein below:

"2.2.The attachments to letter dt. 17.05.2022 does not consist of any information/material to infer any escapement of income. There is no reference to any Books of Accounts, documents or evidence to infer any escapement of income. There is nothing in the attachments which evidence any escapement of income in the form of any asset as per the provisions of Sec l49(l)(b) of the Act. There is only an unsubstantiated and baseless allegation of bogus long term capital gain amounting to Rs. 20,07,54,416/- in the verification details attached as downloaded from Insight portal.

2.3.Further, as per the approval u/s 151 of the unamended Act, as it existed prior to Finance Act, 2021, there is another allegation about sale of immovable property of Rs.1,08,76,000/- without appreciating the fact that the same pertains to the sale of agricultural land which was taken over under compulsorily acquisition by Yamuna Industrial Development Authority (evidence enclosed at Appendix-B as submitted in the course of original assessment u/s 143(3) of the Act vide reply dt. 15.12.2015) and the transaction duly disclosed in the audited Balance Sheet (copy enclosed) and duly assessed at the time of original assessment u/s 143(3) of the Act as per assessment order passed on 22.02.2016 (copy enclosed) which was taken up under scrutiny as per AIR information about capital gains for sale of aforesaid property.

2.4.It is a matter of fact, that the assessee does not have/booked/claimed any long term capital gain amounting to Rs. 20,07,54,416/- in AY 2013-14 as is evident from the audited balance sheet filed on record and duly assessed u/s 143(3) of the Act vide aforesaid assessment order passed on 22.02.2016.(copy enclosed).

2.5.The aforesaid allegations about (a) non-existing bogus LTCG (no material supplied how the assessee claimed credit of any bogus LTCG in its books or Bank), which simply doesn't exists on the facts of the matter and a completely false and wrong allegation only, and (b) further duly disclosed sale by way of compulsory acquisition of immovable property and its already concluded assessment in the course of proceedings u/s 143(3) of the Act, does not constitute any alleged escapement of income at all, much less backed by Books of Accounts or other documents or evidence represented in the form of an asset as defined under the provisions of Sec 149(1)(b) as above, and therefore no notice u/s 148 can be issued in the present facts of the case."

5. However, the Assessing Officer ["**AO**"], while proceeding to frame an order under Section 148A(d) of the Act has rejected the objections raised by the petitioner by merely observing that those were "not tenable".

6. We are, thus, of the considered opinion that the AO has woefully failed to discharge the statutory obligation which stood placed upon him. As is manifest from a reading of that order, it is apparent that the AO has failed to record any reasons nor has it chosen to deal with the objections which were raised. in our considered opinion, it was incumbent upon the AO to deal with the contentions which were addressed and record reasons, howsoever rudimentary, in order to evidence due application of mind.

7. Accordingly, we allow the instant writ petition and set aside the order dated 25 July 2022 passed under Section 148A(d) of the Act. The respondents are however granted liberty to initiate proceedings from the stage of the notice dated 17 May 2022 under Section

148A(b) of the Act with due notice to the writ petitioner. The petitioner shall also be accorded an opportunity of hearing.

8. All right and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 5, 2024/p